Supreme Court, U.S.
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No. 93-591

In The

Supreme Court of the United States

October Term, 1993

DORIS JUANITA SWAILS,

Petitioner,

v.

THE STATE OF GEORGIA,

Respondent.

Petition For The Writ Of Certiorari To The Supreme Court Of The State Of Georgia

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether this Court should question a decision from the Georgia Supreme Court that only interprets the Georgia Constitution and statutory law.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

JURISDICTION 1

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 2

CONCLUSION 5

TABLE OF AUTHORITIES

Page

CASES:

Butler v. Claxton, 221 Ga. 620 (146 S.E.2d 763) (1966) 3

Flint River Steamboat Co. v. Foster, 5 Ga. 194 (1848) 3

Hearn v. Laird, 103 Ga. 271 (1897) 4

Hill v. Levenson, 259 Ga. 395 (1989) 3

Strange v. Strange, 222 Ga. 44 (1966) 4

Van Oster v. Kansas, 272 U.S. 465, 47 S.Ct. 133, 71 L.Ed.2d 354 (1926) 3

Williams v. Overstreet, 230 Ga. 112 (1973) 4

STATUTES:

O.C.G.A. § 16-13-49(d) 2

O.C.G.A. § 16-13-49(o)(2) 5

O.C.G.A. § 16-13-49(o)(3) 5

O.C.G.A. § 16-13-49(o)(5) 2, 5

O.C.G.A. § 16-13-49(p)(6) 2

O.C.G.A. Ch. 16-13 3

28 U.S.C. § 1257(a) 1

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JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a) where the validity of a state statute is drawn into question which Petitioner claims is in violation of the Constitution of the United States.

STATEMENT OF THE CASE

Pursuant to the forfeitures provision of the Georgia Controlled Substances Act (O.C.G.A. § 16-13-49), property was seized from Petitioner's place of business. When property is seized under this Act, O.C.G.A.

§ 16-13-49(o)(5) and (p)(6) specifically require that " . . . a hearing must be held within 60 days after service of the complaint unless continued for good cause and must be held by the Court without a jury."

Despite this language, the Petitioner requested a jury trial before the trial court which was denied, but the trial court authorized an interlocutory appeal to the Georgia Supreme Court. On June 14, 1993, the Georgia Supreme Court affirmed the decision of the trial court that authorized forfeiture proceedings to be before the Court without a jury.

REASONS FOR DENYING THE WRIT

INTERPRETING THE GEORGIA CONSTITUTION IN CONJUNCTION WITH STATUTORY LAW DID NOT IMPLICATE A FEDERAL CONSTITUTIONAL RIGHT AND SHOULD NOT BE DISTURBED.

Pursuant to the forfeiture provision of the Georgia Controlled Substances Act (O.C.G.A. § 16-13-49), when property is seized from a place of business, the Georgia legislature determined that the proceedings " . . . must be held by the Court without a jury." The Petitioner had property seized which was "found in close proximity to" a controlled substance, or was "derived or realized from" or "used . . . to facilitate a violation of" Georgia's Controlled Substances Act. O.C.G.A. § 16-13-49(d). Despite the explicit language from the Georgia Legislature, Petitioner sought a jury trial concerning the forfeiture.

This is not a case of interpretation of a Federal constitutional right to a jury trial since the Seventh Amendment

to the United States Constitution does not prevent the states from providing for a bench trial in statutory forfeiture proceedings. *Van Oster v. Kansas*, 272 U.S. 465, 467, 47 S.Ct. 133, 71 L.Ed.2d 354 (1926); *Butler v. Claxton*, 221 Ga. 620, 621 (146 S.E.2d 763) (1966). Petitioner is seeking to have this Court review and change a decision from the Georgia Supreme Court that interprets a Georgia statutory provision under the Georgia Constitution. In essence, Petitioner is asking this Court to usurp a function reserved exclusively to the Georgia Supreme Court.

Article I, Section I, Paragraph 11(a) of the Georgia Constitution provides that "[t]he right to trial by jury shall remain inviolate . . . ", but Georgia courts in *Flint River Steamboat Co. v. Foster*, 5 Ga. 194, 207-208 (1848) and *Hill v. Levenson*, 259 Ga. 395 (1989) have concluded that the right to a jury trial "means that it shall not be taken away, as it existed in 1798, when the [first] instrument was adopted, and not that there must be a jury in all cases." In fact, the Georgia Supreme Court recognized that the Georgia General Assembly may provide for new remedies that will accommodate the "ever shifting state of society." *Id.* at 208. In essence, the right to a jury trial attached to all actions recognized at common law. Neither the Georgia Controlled Substances Act (O.C.G.A. Ch. 16-13) nor the drug problems with its resultant seizures existed at common law.

This is not the only instance where the Georgia Legislature has required trials without a jury. The Georgia Uniform Reciprocal Enforcement of Support Act and cases in equity to enforce an equitable lien on funds are also proceedings conducted without a jury which the Georgia Supreme Court has properly authorized. In

Strange v. Strange, 222 Ga. 44 (1966), a divorced father sued by his former wife under the Georgia Uniform Reciprocal Enforcement of Support Act contended that he had a right to a jury trial even though the Act specifically precluded such a trial. The Georgia Supreme Court stated:

> The Uniform Reciprocal Enforcement Act for the support of the dependent children and others is wholly of statutory origin and unknown to the common or statutory law of England prior to our first constitution, and therefore, in a proceeding under this Act, the father of the minor children is not entitled to a jury trial as a constitutional right.

Id. at 47.

Further, in *Williams v. Overstreet*, 230 Ga. 112 (1973) which was an equitable case concerning a damaged dwelling house, no jury trial was authorized and the Georgia Supreme Court first quoted *Hearn v. Laird*, 103 Ga. 271, 276 (1897) and stated: "[i]t is equally well established that in equity causes the right of a trial by jury is not constitutional, but statutory; and a legislative restriction thereof, in cases of auditor's reports would be constitutional." The Court went on to state at p. 116:

> "The appellants in this case have not been denied their constitutional right to a jury trial, because there is no such right in a case such as this." The provision in the Constitution of Georgia, that "trial by jury, as heretofore used, shall remain inviolate" means, that it shall not be taken away in cases where it existed when that instrument was adopted in 1798; and not that

there must be a jury in all cases. (citation omitted).

Equally unknown in 1798 were the provisions of the Georgia Controlled Substances Act along with its forfeiture provisions. Consistent with its previous analysis, the Georgia Supreme Court correctly determined that its Constitution did not preclude the Georgia Legislature from eliminating a jury trial.

Perhaps what is overlooked is the fact that the Petitioner still possesses all of the due process protection afforded with a jury trial. When property is seized in a drug case, a complaint and summons is served upon the owner or interest holder in the property (O.C.G.A. § 16-13-49(o)(2)); the owner or interest holder in the property may file an answer asserting a claim against the property (O.C.G.A. § 16-13-49(o)(3); and a hearing must be held within 60 days after service of the complaint unless the case is continued for good cause. (O.C.G.A. § 16-13-49(o)(5)). Nothing precludes the Petitioner from asserting everything that he would assert before a jury. His due process rights remain intact.

CONCLUSION

Consistent with precedent, the Georgia Supreme Court has properly determined that drug forfeiture proceedings can be handled by a court without a jury. Since

this involves the interpretation of the Georgia Constitution and no Federal constitutional right is implicated, that decision should not be disturbed.

Respectfully submitted,

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